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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,519	07/28/2003	Gregory A. Ehlers	68,180-004	4286
26753	7590	08/11/2006	EXAMINER	
ANDRUS, SCEALES, STARKE & SAWALL, LLP 100 EAST WISCONSIN AVENUE, SUITE 1100 MILWAUKEE, WI 53202				SHERR, CRISTINA O
ART UNIT		PAPER NUMBER		
		3621		

DATE MAILED: 08/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/628,519	<b>Applicant(s)</b> EHLERS ET AL.
	<b>Examiner</b> Cristina Owen Sherr	<b>Art Unit.</b> 3621

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 08 May 2006.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-6,37,38 and 42-47 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-6, 37-38, 42-47 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All . b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
4)  Interview Summary (PTO-413)  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_  
Paper No(s)/Mail Date: \_\_\_\_\_

## DETAILED ACTION

1. This communication is in response to applicant's amendment filed May 8, 2006.

### ***Election/Restrictions***

2. Applicant's election without traverse of claims 1-6, 37-38 and 42-47 in the reply filed on May 8, 2006 is acknowledged.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-6, 37-38 and 42-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rector et al (US 6,115,676) in view of Budike, Jr. (US 6,311,105).

6. Regarding claims 1, 37, 38, and 42 –

Rector discloses a method for providing at least one program to a utility of a commodity, the program aimed at managing demand for the commodity, including the steps of: defining a program having a subset of the plurality of devices for which usage of the commodity may be managed by activating the program (e.g. col 10 13-23); delivering the commodity to the subset of devices (e.g. col 9 ln 30-40); measuring the instantaneous rate at which the commodity is being delivered to the subset of the devices (e.g. abs, fig. 4).

7. Rector does not disclose, but Budike does the utility delivering the commodity to at least one customer site, the customer site having a plurality of devices that use the

commodity (e.g. abs., col 7 ln 1-18), sending the instantaneous rate for each device within the subset to the utility; and, determining, in real time, a capacity associated with the delivery of the commodity which may be available for management by activating the program. (e.g. col 8 10-23).

8. It would be obvious to combine the teachings of Budike and Rector as both are in the same field and would yield greater economy in energy and utility management.

9. Regarding claims 2, 43 –

Budike discloses a method including the steps of: activating the program; and, subsequently measuring at least one of a rate and a change in the rate at which the commodity is being delivered to the subset of the devices (e.g. col 9 ln 25-42).

10. Regarding claims 3, 44 –

Rector discloses a method including the step of determining an actual capacity of the commodity saved by activating of the program (e.g. abs, col 2 ln 34-51).

11. Regarding claims 4, 45 –

Rector discloses a method including the step of providing at least one of an alternate rate and a billing adjustment rebate to at least one customer as a function of the actual capacity managed at the related customer site by the program (e.g. col 7 ln 45-60).

12. Regarding claims 5, 46 –

Rector discloses a method wherein the at least one of an alternative rate and a billing adjustment is also a function of historical usage information (e.g. abs, col 7 ln 26-34).

13. Regarding claims 6, 47 –

Rector discloses a method including the step of verifying management of the devices within the subset of the devices (e.g. col 10 ln 4-15).

14. It would be obvious to one of ordinary skill in the art to modify the invention of Rector to include the features of Budike in order to centrally regulate specific consumption.

15. Examiner's note: Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may be applied as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention as well as the context of the passage as taught by the prior art or disclosed by the examiner.

### **Conclusion**

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cristina Owen Sherr whose telephone number is 571-272-6711. The examiner can normally be reached on 8:30-5:00 Monday through Friday.

17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3621

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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COS, 07/20/06

*Willa J. Givens*  
PRIMARY EXAMINER